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Proposed Rule

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

Treasury Decisions

19 CFR Part 12

(T.D. 85-38)

Customs Regulations Amendments Relating to Textiles and Textile Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Section 204 of the Agricultural Act of 1956 grants authority to the President to negotiate agreements with foreign governments limiting exports of textiles and textile products from such countries into the U.S. The Act also grants authority to issue regulations governing the entry into the U.S. of articles covered by the agreements. This regulation amends the Customs Regulations to prevent circumvention or frustration of visa or export license requirements contained in multilateral and bilateral agreements to which the U.S. is a party in order to facilitate the efficient and equitable administration of the U.S. Textile Import Program.

DATE: This regulation is effective on April 4, 1985.

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SUPPLEMENTARY INFORMATION:

BACKGROUND

In order to implement import policies with respect to textiles and textile products, Congress provided authority to the President to negotiate textile restraint agreements in section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and authority to carry out such agreements by issuing regulations governing the entry of merchandise covered by the agreements into the United States.

In December, 1973, representatives of 50 nations meeting under the General Agreement Tariff and Trade (GATT) aegis, negotiated the Multi-Fiber Arrangement Regarding International Trade in Textiles. The arrangement is usually known as the Multi-Fiber Arrangement, or MFA, and came in force on January 1, 1974. It was subsequently renewed and next expires on July 31, 1986.

Under the MFA, the U.S. has negotiated numerous bilateral restraint agreements. The U.S. also has several bilateral agreements with MFA non-signatories. The Committee for the Implementation of Textile Agreements (CITA) was established by Executive Order 11651 on March 3, 1972, to supervise the implementation of textile agreements. The future administration of these agreements was severely jeopardized by the decision of the United States Court of International Trade in *Cardinal Glove Co.* v. *United States*, 4 C.I.T. 41, which concluded that, absent specific regulatory authority to the contrary, the bilateral textile agreement at issue therein was applicable only to textile products in which the agreement country was the "country of exportation." Furthermore, the U.S. Customs Service was faced with an ever increasing number and variety of instances where attempts had been made to circumvent the textile import program.

In part because of these problems and in order to prevent circumvention or frustration of the various multilateral and bilateral agreements to which the U.S. is a party and to facilitate efficient and equitable administration of the U.S. Textile Import Program, the President signed Executive Order 12475 on May 9, 1984. Under the Executive Order the Secretary of the Treasury was required to promulgate regulations governing the entry of textiles and textile products subject to section 204, Agricultural Act of 1956 within 120 days of the May 11, 1984, effective date of the Executive Order. Interim Customs Regulations implementing the Executive Order were published in the Federal Register on August 3, 1984 as T.D. 84-171 (49 FR 31248). Customs further requested public comment on the interim regulations. Over 650 comments were received in response to the solicitation of comments. A discussion of the interim regulations, comments received, changes made to the interim regulations during the comment period and further changes made by this document as a result of the comments are set forth below.

DISCUSSION OF COMMENTS

Section 12.130

The interim regulations amended Part 12, Customs Regulations (19 CFR Part 12), by adding a new section 12.130 which provided specific regulatory authority mandating that "country of origin" rules be applied in determining whether textiles or textile products are subject to any of the multilateral or bilateral textile agreements negotiated by the U.S. pursuant to section 204, Agricultural Act of 1956.

For purposes of section 12.130, paragraph (a) defined country of origin. Under that paragraph, textiles or textile products subject to section 204, Agricultural Act of 1956, imported into the customs territory of the U.S. are a product of a particular foreign territory or country or insular possession of the U.S. if the article is wholly the growth, product, of manufacture of that foreign territory or country or insular possession. In the case of an article which consists, in whole or in part, or materials which originated or were processed in another foreign territory or country, the article must have been substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce with a name, character, or use distinct from the article or material from which it was so transformed to be a product of the latter territory or country or insular possession.

Paragraph (b) of interim section 12.130 listed criteria for determining whether there has been a substantial manufacturing or processing operation and whether a new and different article has resulted. It was indicated that the criteria set forth were not meant to be exhaustive. As the circumstances warrant, fewer than all, or additional factors could be considered determinative. However, paragraph (b) specifically stated that no article or material would be considered to have been substantially transformed in a particular foreign territory, country, or insular possession of the U.S. by virtue of having merely undergone any of the following: (i) simple combining or packaging operations, (ii) joining together by sewing, looping, linking or other means of attaching otherwise completed component parts, (iii) cutting or otherwise separating of articles from materials which have previously been marked with cutting lines or which contain lines of demarcation of any type, commercially requiring that material to be cut in a certain manner, or (iv) processing, such as dyeing, printing, showerproofing, superwashing, or other finishing operations.

It was stated that to determine whether there has been a substantial manufacturing or processing operation under paragraph (b)(2) a comparison would be made between the article or material before the manufacturing or processing operation and the article in its condition after the manufacturing or processing operation. The following criteria would be considered under paragraph (b)(2):

(i) Material; costs,

(ii) Direct labor costs,

(iii) Other direct processing or manufacturing costs,

(iv) Time involved in the manufacturing or processing operation,

(v) Complexity of the manufacturing or processing operation,

(vi) Level or degree of skill or technology required in the manufacturing or processing operation,

(vii) Physical change of the material or article at each stage in the manufacturing or processing operation.

Paragraph (b)(3) of the interim regulation set forth criteria which would be used to determine whether, as a result of the manufacturing or processing operation, a new and different article has been produced. These criteria included such things as a change in (i) commercial designation or identity, (ii) essential character, (iii) commercial use.

To ensure that appropriate facts are available and to assist otherwise in the identification of the country of origin, the interim regulation provided that all importations of textiles or textile products subject to section 204, be accompanied by a declaration. If the textiles or textile products are wholly the growth, product, or manufacture of a single foreign territory or country or insular possession, the declaration set forth in paragraph (c)(1) of the interim regulation was required. If the textiles or textile products were subjected to manufacturing or processing operations in more than one foreign country or territory or insular possession, the declaration set forth in paragraph (c)(2) was required. The declaration required a description of the manufacturing and/or processing operations, materials used, costs involved and the identity of the country, territory or insular possession involved. In some cases, where mixed shipments are involved both declarations would be required. The interim regulations stated that the declaration(s), could be prepared by the manufacturer, producer, exporter or importer, and must be filed with the entry. If multiple manufacturers, producers, or exporters are involved, the interim regulations indicated that a separate declaration prepared by each could be filed with the entry. Under the interim regulations the determination of country of origin would normally be based upon the information contained in the declaration(s). The declaration(s) would not be treated as a missing document for which a bond could be filed. The interim regulations stated that entry of the merchandise would be denied unless accompanied by the declaration(s).

Customs recognized that importers would not be in a position to always get sufficient information to complete the declaration(s). Accordingly, under paragraph (d) of the interim regulations, if the district director determined that the information required by the declaration(s) was incomplete or insufficient and the importer was unable to provide the required information, the importer could submit to Customs with the declaration(s), a certification which

stated that in the exercise of due diligence he was unable to obtain all of the information required.

If the district director was unable to determine the country of origin because of incomplete or insufficient information in the declaration, under the provisions of paragraph (e) of the interim regulations, release of the merchandise from Customs custody would be denied until a determination of country of origin was made based upon the best information available. In this regard, the interim regulations authorized the district director to consider the experience and costs of domestic industry in similar manufacturing or processing operations.

The interim regulation went on to state that although the rule of origin set forth in section 12.130 would determine the country of origin of textiles and textile products subject to section 204 the rule did not change the "foreign article" status of textiles or textile products under Headnote 2, Part 1, Schedule 8, TSUS (19 U.S.C. 1202). Under Headnote 2 any product of the U.S. which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported articles which has been assembled abroad in whole or in part of products of the U.S., will be treated for purposes of the Tariff Act of 1930, as amended, as a "foreign article".

Date of exportation was defined in paragraph (f) of the interim regulation. Under this paragraph, for quota, visa or export license requirements and statistical purposes, the date of exportation for textiles and textile products, subject to section 204, was established as the date the vessel or carrier left the last port in the country of origin as defined by section 12.130. Contingency of diversion in another foreign territory or country would not change the date of exportation for quota, visa or export license requirements or for statistical purposes. The inclusion of this definition was necessary to ensure enforcement of the date of export provisions contained in various bilateral agreements.

Numerous comments were received with respect to the provisions of section 12.130. These comments fell into the following areas:

Insular Possessions

Many of the commenters expressed the belief that the interim regulation was inconsistent with the language and intent of General Headnote 3(a), TSUS, relating to products of insular possessions. The commenters stated that the legislative history of that Headnote indicates Congress wanted to encourage light industry and assembly operations in the insular possessions. Moreover, certain commenters pointed out that the preferences under General Headnote 3(a) are destroyed by repealing a statutory 50 percent test and imposing a new origin test. Other commenters noted an apparent conflict between section 204 which authorizes negotiations with foreign governments and regulation of trade with foreign countries

and the Territorial Clause of the U.S. Constitution encompassing insular possessions which are considered to be part of the U.S. In addition, one commenter mentioned that the interim regulation is in contravention of an established practice whereby an article is considered to be a product of an insular possession within the meaning of General Headnote 3(a), TSUS, if substantial processing operations are performed in the insular possession. Another commenter opposed exemption of the insular possessions on the grounds that textile operations would be established in the insular possessions to avoid quota.

First, it should be pointed out that neither the interim nor the final regulation changes in any way the requirements of General Headnote 3(a), which grants preferential tariff treatment to insular possessions of the U.S. By the wording of that Headnote, to achieve the preferential tariff treatment, merchandise must both be the growth or product of the insular possession and satisfy a specified percentage of its value derived from that insular possession. Section 12.130 is concerned only with defining whether, in the case of General Headnote 3(a), merchandise is the growth or product of an insular possession. It does not, as one commenter noted, regulate imports from insular possessions, but, rather provides a rule of origin which allows Customs to determine in which foreign territory or country, or insular possession imported merchandise actually originated. To achieve this result, the regulations must cover all foreign territories or countries, or insular possessions outside the U.S. customs territory. General Headnote 2, TSUS, indicates that the customs territory of the U.S. includes only the states, the District of Columbia, and Puerto Rico. Therefore, the regulations apply to textiles and textile products that are imported into the customs territory of the U.S. from the insular possessions. To exempt the insular possessions from coverage under the regulations would grant them a preferential status not authorized by law.

Applicability to U.S. Articles Sent Abroad

Various comments were received concerning the treatment of articles assembled abroad from U.S. components and imported under item 807.00, TSUS. The proviso contained in section 12.130(a) of the interim regulations reflects the intent to retain the "foreign article" status of textiles or textile products under Headnote 2, Part 1, Schedule 8, TSUS. Several commenters noted that the "foreign article" proviso in the interim regulations conflicts with the rule of origin contained in section 12.130. Other commenters requested confirmation that the quota status of 807 and non-807-merchandise cut in the U.S. and assembled in a foreign country remains unaffected by section 12.130. Some commenters suggested amending the interim regulations to provide that textiles processed for U.S. components that have not been substantially transformed whether or not subsequently entered under 807 procedures are not subject to

quotas. Other commenters suggested that reliance on Headnote 2, Part 1, Schedule 8 is not sufficient to ensure that the "foreign article" status of textiles and textile products entered under Schedule 8 is applicable for purposes of section 204.

Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad shall be a foreign article for the purposes of the Tariff Act of 1930. Customs agrees that the applicability of the proviso in section 12.130(a) of the interim regulations is not sufficiently clear and should be amended.

The language of Headnote 2, Part 1, Schedule 8, is clear and unambiguous. It applies, without regard to degree of advancement in value, improvement in condition, or assembly, to such merchandise for duty and marking purposes. It is recognized that it is not, on its face, applicable to matters, such as country of origin determinations for quota purposes, which do not fall within the purview of any of the provisions contained in the Tariff Act of 1930, as amended.

Customs believes that Congress, by using similar language in statutes dealing with the origin of merchandise, clearly intended that there should be only one rule for determining the country of origin of merchandise, without regard to the particular statute requiring that determination. Therefore, it is believed that Congress did not intend for Customs to apply one rule of origin for duty and marking purposes and a different rule of origin for the purposes of section 204. In order to avoid this inconsistency, the proviso concerning the foreign status of U.S. articles sent abroad has been amended to state clearly that although Headnote 2 is not directly applicable to merchandise subject to section 204, Customs will apply the headnote to that merchandise in order to achieve the Congressionally intended result of a single rule for determining the country of origin of imported merchandise.

Customs recognizes that the language of Headnote 2 sets out a principle of origin that is not consonant with the origin rules contained in the interim regulations. In this regard, Headnote 2, in and of itself, is not a rule of origin; rather, it is a statutory enactment by the Congress exempting a certain class of merchandise from the normal rules of origin. In order to achieve a single rule of origin, Customs believes that it is appropriate to extend this exemption to merchandise subject to section 204.

Customs also has been advised by the CITA that when the various bilateral agreements to which the U.S. is a party were negotiated, merchandise classifiable in item 807.00, TSUS (i.e. U.S. products assembled abroad) was considered for quota, visa, and export license purposes to be a product of the assembling country and not the U.S.

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The final rule incorporates the modified language relating to Headnote 2, Part 1, Schedule 8, TSUS, in a new section 12.130(c).

Finishing Operations

Many commenters criticized the interim regulations on the grounds that finishing operations on greige goods are significant and substantial manufacturing processes that create a new and distinct final product. Other commenters pointed out that printing requires sophisticated machinery and advanced design. Some commenters suggested that section 12.130(b)(4) of the interim regulations refers to specific dyeing or printing operations and not to the entire process by which greige goods are transformed.

Other commenters in opposition observed that the term "other finishing operations" lacks precision. Several commenters noted that showerproofing and superwashing can be marginal operations, but the term"finishing" usually connotes sophisticated processing. One commenter recommended that a substantial transformation should not result from "minor processing, such as showerproofing and superwashing, which merely alter previously finished fabric or yarn". Some commenters pointed out that the courts have long recognized that finishing can result in a new and different article of comerce. In their view, the appllication of a *per se* rule with regard to finishing is contrary to law. One commenter observed that dyeing and printing adds 100 percent value to greige goods. This same commenter noted that dyeing and printing is considered by the European Economic Community (EEC) to connote origin.

Customs believes it is appropriate to amplify on the dyeing or printing example in the interim regulations to provide better guidance on the type or types of operations that will result in a change in the country or origin. Three examples concerning finishing operations have been inserted in the final regulations which are more specific and convey Customs views that, in the case of fabrics, usually any finishing operations short of a combination of both dyeing and printing together with at least two other major finishing operations will not result in a substantial transformation of the fabric.

To satisfy the objections of some commenters that certain marginal processing should not result in a substantial transformation, Customs has added language in section 12.130(e)(2) in the final rule indicating that dyeing or printing, or dyeing and printing of fabrics and yearns, or one or more finishing operations on yarns, fabrics, or garments, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking mercerizing, or similar operations, will not usually result in a subtantial transformation.

Very few commenters touched on yarns, and, therefore, that area was not addressed in the examples in the final rule of what finishing operations yarns must be subjected to in order to have a change in their country of origin. This area, as any other factual situation not specifically set out in the regulations, will be ruled

upon by Customs in accordance with the general principles of origin in section 12.130, as the situations arise.

It is axiomatic, moreover, that because of the evolution of country of origin principles, as evidenced by longstanding American judicial and administrative precedent, it is not proper to resort to other countries or organization rules of origin, such as the EEC, in defining U.S. rules of origin.

Cutting

Numerous commenters deem the concept of country of origin in the interim regulations to constitute a critical departure from longstanding judicial precedent and existing administrative practice.

A considerable number of commenters regard cutting of fabric as a minor process in relation to the manufacture of a garment. Other commenter stated that cut parts are not articles of commerce even though a new and different article is created. Quite apart from this view are the statements of some commenters that cutting by itself, which requires great skill, can be a substantial transformation. Some commenters recommended removing the distinction between marked and unmarked fabric, because they consider marking a minor operation. This approach as noted by some commenters, is fully consistent with *Belcrest Linens* v. *United States,* Appeal No. 84–734 (Fed. Cir. August 21, 1984), in which the court found that the cutting and sewing operations which occur in the manufacturing of a pillowcase subsequent to the marking of fabric, resulted in a new and different article. The same commenters go on to say that the court indicated the marking of the fabric did not result in a dedication to use of the fabric as pillowscases.

Those commenters who contend that cutting does not substantially transform fabric misconstrue the principle of substantial transformation derived from court decisions and administrative practice. Cutting garment parts from fabric will result in a substantial transformation of the fabric. This is not to say, however, that the cut pieces will not undergo a later substantial transformation. Axiomatic to Customs definition of country of origin is the notion that in the case of textiles and textile products which consist of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession, the imported merchandise shall be a product of that foreign territory or country, or insular possession, where it last underwent a substantial transformation. (see section 12.130(b) of the final rule.)

In determining the country of origin of pre-marked fabric that is further processed in one or more countries, Customs will be guided by the facts in each particular case and by the principles developed in the *Belcrest Linens* decision and contained in section 12.130.

In this regard Customs has included two examples in sections 12.130 (e)(1)(iv) and (e)(2)(ii) in the final regulations which specifically deal with cutting. The first example is where fabric is cut into component parts and those parts are assembled in the same country into a completed article. In that example, the country where

the article is cut and assembled is the country of origin of that article. The second example is where fabric which is readily identifiable as being intended for a particular commercial use (*e.g.* towelling or bed linen material) is merely cut to length or to width, with the edges then being either hemmed or overlocked. In this example, the foreign territory or country, or insular possession which produced the fabric is the country of origin, and not the country where the fabric was cut.

Uniform and Established Practice

A number of commenters have pointed out that the interim regulations, in effect, change various uniform and established practices and marking requirements. Section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), provides that Customs may not administratively change an established and uniform practice of classification if that change will result in the imposition of a higher rate of duty without a publication in the Federal Register providing at least a 30-day notice of such change. Section 177.10(c), Customs Regulations (19 CFR 177.10(c)), further requires that a preliminary notice be published in the Federal Register giving interested parties an opportunity to make written submissions with respect to the correctness of the proposed change. It is contended that the interim regulations are violative of both the statute and the regulation.

The interim regulations and the final regulations have as their authority section 204, which authorizes the President to enter into international agreements to control the importation of textiles and textile products and to issue regulations to effectuate those agreements. In order to avoid circumvention of our international agreements, the President, by Executive Order 12475 of May 9, 1984, directed the Secretary of the Treasury to make clarifications in, or revisions to, country of origin rules for textiles and textile products subject to section 204.

Therefore, the origin rules in section 12.130 are effective only for textile restraint purposes. However, it is Customs' view that the origin rules in section 12.130 are derived from Customs' interpretation of various court cases, most particularly *Uniroyal, Inc.* v. *United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982). Therefore, the principles of origin contained in section 12.130 are applicable to merchandise for all purposes, including duty and marking. Nevertheless, Customs recognizes that there are a few instances where the application of those principles will cause an increase in the rate of duty for merchandise subject to established and uniform practices. In those instances Customs will not apply the principles of origin in section 12.130 for duty purposes until such time as the formalized changes in practice have been effectuated. Customs will also continue its previous marking requirements pending the changes in practice. Section 12.130 will be used in determining the

country of origin of textiles and textile products for quota, visa, and export license purposes. This latter application is not prevented by either 19 U.S.C. 1315(d) or section 177.10(d), Customs Regulations, because it does not raise the applicable rate of duty.

Assembly of Knit-to-Shape Garment Parts

Significant differences emerged among the numerous commenters on the issue of the joining together by looping or linking of knit-to-shape panels produced in a single country. Some commenters observed that the essential character and shape of a knit-to-shape garment is derived from the knitting. It was noted, too, that full fashion knit sweaters are produced using a labor intensive process known as "handlooming" whereby it takes one skilled laborer a full day to produce the component parts for one sweater. One commenter recommended that for garments made from knit-to-shape components produced in two countries, origin should be defined according to the portion knit in each country. Contrary to these statements are the claims of other commenters who contend that the panels which constitute approximately ten percent of the cost of a completed garment, do not resemble a sweater until they are joined together. Similarly, some commenters assert that the knitting of panels is an uncomplicated process that requires little skill. Compared to knitting, these commenters state that looping is a highly skilled process for which it takes up to 2 years to train an operator on more complicated and costly machines. Furthermore, it is contended that looping and related finishing processes represent proportionately the largest percentage of the total cost of the sweater.

Customs is well aware that the interim regulations have engendered much debate on the subject of the assembly of knit-to-shape components. Customs has thoroughly studied the submitted comments and remains convinced that the joining together by looping, linking, sewing, or other means, of knit-to-shape components produced in a single country, even when accompanied by other processes (i.e. washing, drying, mending, etc.) normally incident to the assembly process will not usually cause a substantial transformation. The evidence before us establishes that based on time, value added by processing at each stage, complexity, etc. such an assembly process does not cause the knit-to-shape components to be substantially transformed. The assembly of knit-to-shape component parts is a relatively simple processing operation that does not require a great deal of time. Therefore, one of the examples included in section 12.130(e)(2)(iii) in the final regulations as not constituting a change in the country of origin is the assembly into a completed garment of knit-to-shape component parts.

Assembly by Sewing

Virtually all of the comments received concerning garments made from cut pieces of fabric opposed the interim regulations. Many of the commenters observed that garments made of cut pieces that are sewn together derive much of their style from the multiplicity of small parts and the manner in which they are assembled. Similar statements running through the comments suggested that the essence of a garment is created by joining the pieces together. Consistent with the concept of substantial transformation articulated by the court in *Anheuser Busch* v. *United States*, 207 U.S. 556, *Cardinal Glove Co., Inc.* v. *United States*, 4 C.I.T. 41, and *Uniroyal, supra,* these commenters argued that the sewing of components constitutes a substantial transformation so that the country of assembly is the country of origin of the completed garment. Only the assembly of incidental components, it was recommended, should not result in a substantial transformation. It was proposed that labor costs should not be considered as a criterion in the origin rule, but, rather, for garments assembled from cut pieces, the country of origin should be the country where at least 60 percent of direct labor in minutes of production time is expended in converting the finished fabric into a completed garment. If no country satisfies the 60 percent requirement, then it was sugeted the country of origin should be the country where the majority of the labor in minutes was performed.

It is believed that the adoption of an arbitrary rule of origin based solely on the minutes of production in each country would be clearly contrary to judicial precedent. Customs believes that factors such as time, the nature of the sewing operation, and the skill required to sew together a tailored garment should be considered in determining whether the merchandise was substantially transformed.

After reviewing all the information available, Customs is persuaded that the assembly of all cut pieces making up a garment is sufficiently more complex and requires greater skill, time, and effort, than the assembly of knit-to-shape components into a garment to warrant a distinction between the two assembly operations. Accordingly, Customs believes that the assembly of all the cut pieces of a garment usually is a substantial manufacturing process that results in an article with a different name, character, or use than the cut pieces. It should be noted that not all assembly operations of cut garment pieces will amount to a substantial transformation of those pieces. Where either less than a complete assembly of all the cut pieces of a garment is performed in one country, or the assembly is a relatively simple one, then Customs will rule on the particular factual situations as they arise, utilizing the criteria in section 12.130(d).

To avoid confusion in this area, an example has been inserted in section 12.130(1)(e)(v) of the final regulation which states that a

substantial assembly of all the cut pieces of a garment into the completed garment will be a substantial transformation. To further clarify additional examples, of some of the types of garments which Customs believes involve a substantial assembly have been included.

Substantial Transformation Criteria

Several commenters perceived section 12.130(a) of the interim regulations as instituting a two-step test for an article produced by multi-country operations, whereby such an article will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

Other commenters point out that the establishment in the interim regulations of separate criteria for determining substantial manufacturing or processing operations and a new and different article creates an inconsistency to these commenters who believe not all substantial transformations result in a new and different article. They have suggested that the concept of a "new and different article" should be replaced by the phrase "change in character and/or quality".

One commenter pointed out that the criteria for a new and different article are not found in the *Belcrest Linens* decision. Another commenter suggested eliminating the term "essential" in the phrase "essential character", because the term is defined in the case of *United China & Glass Co.* v. *United States,* 61 Cust. Ct. 386, C.D. 3637 (1968) as that which is indispensable to an article.

One commenter advised changing "substantial manufacturing or processing operation" to "further work or material", because it is the transformation and not the processing that is important. Some of these commenters argued that the criteria are too subjective and not definitive, because Customs officers may consider additional unstated factors.

There was little disagreement among the commenters that the detailed cost information required for determining whether a substantial manufacturing or processing operation occured represented an arduous and formidable impediment to importers.

Many commenters opposed the specific provisions in the interim regulations which stated that certain operations would not result in substantial transformations. These commenters contended that the Customs Service is inconsistent by requiring country of origin determinations to be made on the basis of factual evidence and specific criteria, but then stating that certain operations will never result in a substantial transformation.

Customs submits that those commenters who state that Customs has fashioned a new two-step test to determine country of origin for articles produced in multi-country operations have overlooked past court decisions. For example, the court in *Belcrest Linens*

stated that the name, character, or use of an article must be changed in order to have a substantial transformation. In determining whether the processing performed on the merchandise in that case constituted a substantial transformation, the court maintained that the issue is "the extent of the operations performed" and whether the merchandise subject to those operations loses its identity by becoming a new article.

In *Uniroyal* v. *United States*, the court characterized the attachment of the outsole to the upper as a "minor manufacturing or combining process which leaves the identity of the upper intact". The court went on the say that to consider attachments of this kind to be a "substantial transformation" would be to open the door wide to frustration of the entire marking statute.

It follows that the courts have determined that the concepts of a new and different article and a substantial manufacturing or processing operation are particular aspects of a substantial transformation. In this regard, a specific statement defining substantial transformation in these terms has been inserted into the final regulations (see section 12.130(b)).

In order to provide guidance to both Customs officers who must make decisions on the country of origin of imported merchandise, and all other interested parties, the more important factors to be considered in determining whether merchandise has been subjected to substantial manufacturing or processing operations and whether a new and different article has been produced have been listed in the final regulations (see section 12.130(d)). These criteria are not intended to be all inclusive and any one, a combination, or other factors not listed may be controlling.

Customs agrees that the phrase "essential character" must be modified because of its particular significance in Customs parlance. Therefore, the word "essential" does not appear in the final rgulations, and, in its place, the word "fundamental" is used (see section 12.130(d)(1)(ii)).

Customs has been persuaded that the cost information criteria listed in the interim regulations is not readily available to importers and, when that information is furnished by manufacturers, it may not be complete or entirely accurate. Accordingly, although the various costs of producing merchandise may be pertinent in determining the country of origin of that merchandise, the criterion of cost information has been dropped in the final regulations. However, if a district director deems cost information to be necessary to a country of origin determination in a particular case, he may still request the importer, manufacturer, or exporter to furnish that information.

In place of the deleted cost factors, a value added criterion has been inserted in the final regulations (see section 12.130(d)(2)(v)). Where appropriate, Customs will consider the value contributed to the imported merchandise in each country performing processing

or manufacturing operations on that merchandise. It is recognized that this information may, in some instances, also be difficult to obtain, but it is believed that it will be much more readily available and more reliable than manufacturers' costs data.

The suggestions by several commenters that the list in the interim regulations of processing or manufacturing operations which do not constitute substantial transformations be expanded and that positive examples be included have been adopted in the final regulations (see section 12.130(e)(2)). These examples are also intended to provide guidance to Customs officers and other interested parties. obviously, the examples represent clear factual situations where the country of origin of the imported merchandise is easily ascertainable. The examples are illustrative of how Customs, given factual situations which fall within those examples, would rule after applying the criteria listed in section 12.130(d). Any factual situation not squarely within those examples will be decided by Customs in accordance with the provisions of section 12.130 (b) and (d).

Scope of the Regulations

Relatively few comments were received concerning which tariff items are covered by the regulations. One commenter suggested limiting the scope of the regulations to wearing apparel. Another commenter noted that it is not the intent of the regulations to cover doll clothing. In light of the fact that the MFA was negotiated to prevent market disruption, and doll clothing is not manufactured by domestic industry, this same commenter states that the MFA does not apply to doll clothing. Moreover, this commenter noted that the tariff provision for doll clothing is eligible for duty-free treatment under the Generalized System of Preferences (GSP). Eligibility under GSP is significant according to the commenter because 19 U.S.C. 2463(c)(1)(A) prohibits textile and apparel articles which are subject to textile agreements from the GSP. Another commenter made a similar observation that the inclusion of artificial flowers must have been inadvertent, because artificial flowers are subject to GSP treatment. By contrast, a commenter suggested expanding the coverage of the regulations to include non-MFA fiber products. The commenter believes this is appropriate under section 204 because that section gives the President broad authority to negotiate and implement agreements on all textiles ant textile products.

In *Mast Industries, Inc., et. al.* v. *Regan, et. al.*, —— C.I.T. —— Slip Op. 84-111 (October 4, 1984), the court held that section 204 is a valid delegation of power to the President to limit textile imports, and that the interim regulations fall within this delegated authority.

Pursuant to section 204, the U.S. entered into a multilateral international agreement known as the "Arrangement Regarding

International Trade in Textiles" (MFA) on January 1, 1974. The MFA provides a framework for the U.S. to negotiate bilateral agreements to limit textile imports.

Article 12 of the MFA defines the term "textile" to include tops, yarn, piece goods, made-up articles, garments and other textile manufactured products (being products which derive their chief characteristics from the textile components) of cotton, wool, man-made fibers, or blends thereof, in which any or all of those fibers in combination represent either the chief value of the fibers or 50 percent or more by weight (or 17 percent or more by weight of wool) of the product.

Under Article 12, the term "textiles" is defined to include the subject articles if they are composed of textile materials.

Although these articles are not subject to restraints under current bilateral agreements, restraints may be imposed in the future under the authority of the MFA.

In *Luggage and Leather Goods Manufacturers of America, Inc. and International Leather Goods, Plastics and Novelty Workers' Union, AFL–CIO* v. *United States et. al.*, —— C.I.T. —— Slip Op. 84–53 (May 11, 1984), the court determined that the MFA is a textile agreement within the meaning of section 2463(c)(1)(A), which is concerned with eligibility requirements for duty-free treatment under GSP. Furthermore, the court found the President's designation of flat goods covered by item 706.39, TSUS, as eligible articles under the GSP was contrary to law.

In sum, the decisions in *Luggage and Leather Goods Manufacturers* and *Mast, supra,* established that any article that is subject to the MFA may be covered by the interim regulations. Nevertheless, to limit the uncertainty faced by the importer in ascertaining whether merchandise will be subject to the regulations, Customs has included in section 12.130(a) of the final regulations a specific statement concerning the coverage of regulations. In essence, the new provision provides that the regulations are applicable to a textile or textile article if it is classifiable in any of the tariff item numbers specifically listed in General headnotes 3(g)(iii)(C)(1), 3(g)(iii)(C)(2), and 3(g)(iii)(E), TSUS, which exempts those textile and textile articles from coverage of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 et seq.), and any other TSUS provisions which have been assigned textile category designations. Those TSUS provisions were determined by the President not to be subject to the CBERA because, pursuant to section 2703, CBERA (19 U.S.C. 2703 (b)(1)), they cover textile and apparel articles which are subject to textile agreements.

Customs does not believe the suggestion that the regulations cover non-MFA products has merit. Section 204 authorizes the President to issue regulations to carry out bilateral and multinational agreements that have been entered into pursuant to that section. There are no such agreements which cover non-MFA prod-

ucts. Therefore, there is no authority to include non-MFA products within the scope of these regulations, except insofar as information is required to distinguish those products from MFA products.

Other Country of Origin Comments

A few commenters regard the interim regulations as adding confusion to the area because of various definitions of the term "country of origin" used by GSP, CBI and other programs. Some of these commenters proposed exempting CBI nations and factories that have been established under the existing definition.

The interim regulations governing textiles and textile products which define when an article is considered to be "a product of" a particular country apply to all imports into the customs territory of the U.S. As noted in the discussion on insular possessions, the commenters have failed to recognize that the GSP and CBI statutes each require that merchandise be a "product of" the affected country. The CBI statute uses the phrase "growth, product, or manufacture", which is stated in *Belcrest Linens* to mean "product of". In this regard, the CBI and GSP programs begin from a common point of requiring an article to be "a product of" a specific country.

Customs believes it is improper to exempt, without specific authority, countries or manufacturers from the coverage of these regulations.

One commenter suggested issuing a public notice and comment period for all rulings requesting a country of origin determination, in addition to notifying CITA of such requests.

This proposal cannot be adopted. Section 177.1(d), Customs Regulations (19 CFR 177.1(d)), defines the term "ruling" in the following manner:

> (d) Definitions. (1) A "ruling" is a written statement issued by the Headquarters Office or the Regional Commissioner, Region II, that interprets and applies the provisions of the Customs and related laws to a specific set of facts.

Under 5 U.S.C. 551(b) "rule making" is defined as an "agency process for formulating, amending, or repealing a rule". Sections 553 (b) and (c) of title 5, contemplate the application of the notice and comment period to rule making proceedings and not to requests for rulings of the type covered by Part 177, Customs Regulations.

With specific reference to the comment about advising CITA regarding requests for rulings on country of origin determinations, section 2(c) of Executive Order 12475 states that the Department of Treasury shall, to the extent practicable, inform CITA of all rulings requests on matters that may reasonably affect the Textile Import Program and to take into consideration any comments on such requests that CITA may submit. That requirement of the Executive Order has been complied with administratively. Executive Order 12475 does not require such a procedure to be incorporated

in the Customs Regulations and Customs can see no valid purpose to be served by doing so.

Declaration Requirements

Numerous comments were received on the documentary evidence of country of origin requirements set forth in 12.130 (c) and (d) of the interim regulations. Several commenters stated that the declaration requires the disclosure of confidential business information concerning costs, which if revealed tc the importer, could place the manufacturer/exporter at a competitive disadvantage. Some commenters recommended that only a description of the manufacturing or processing operation should be required on the declaration and not cost data.

Based on the comments received and Customs own evaluation it has been decided to modify the declaration requirements. Customs will not require that the direct costs of manufacturing and/or processing operations and cost or value of materials to be set forth on the declaration. If cost information is required by Customs at the time of entry of the merchandise to determine country of origin, the manufacturer or exporter in the country of origin or exportation must be prepared to submit directly to the district director, upon request, all pertinent cost information concerning the production or manufacture of the merchandise. He must also be prepared to provide the district director with any other information (e.g., time involved in the manufacturing or processing operation) considered necessary to determine the country of origin. With the elimination of the cost data requirement, the importer should have no difficulty in obtaining and providing on the declaration a complete description of the manufacturing and/or processing operation performed in each country involved in producing the article. Because of this Customs considers the importer's certification required by section 12.130(d) of the interim regulations to be unnecessary and has deleted it from the final rule.

Several commenters stated that Customs should establish guidelines for completing the declaration and state which products and types of transactions are subject to the requirements. Other commenters indicated the regulations should apply only to products subject to visa requirements. Still others believed non-quota countries should be excluded from the declaration requirements.

Customs believes that guidelines can more properly be addressed in detail in administrative and operational instructions and rulings. With respect to product coverage, as stated earlier a new section 12.130(a) has been added to the final rule which addresses this matter. The country of origin rules and declaration requirements of section 12.130 must apply to textiles and textile products from all countries not just countries with which the U.S. has bilateral agreements or quotas since the rules followed to determine the country of origin are the same for all merchandise. Since merchan-

dise is frequently processed in several countries Customs must have complete information in order to determine the correct country of origin.

One commenter suggested that the declaration be related to the commercial invoice and not the entry since an entry could cover merchandise from more than one declaration. The commenter stated that the manufacturer/exporter who executes the declaration prior to exportation will have no way of relating the declaration to an entry.

Customs agrees that this could be the case. However, upon review it is believed to be the better approach to allow the declaration to be related to either the invoice or entry at the declarant's option. Accordingly, the wording of the declarations have been changed to indicate that the declaration may be related to either the invoice or the entry.

Several commenters stated that they should be authorized to treat the declaration as a missing document for which a bond may be filed.

The main purpose of the textile regulations is to prevent circumvention of multilateral and bilateral agreements. In order to carry out this mandate Customs must have all the necessary documentation prior to release of the merchandise to determine the correct country of origin. The declaration must be presented at the time of entry so that a determination of the country of origin can be made for quota and or visa purposes, when that is required. In addition, accurate trade statistics are needed for all importations of textiles and textile articles from all countries for monitoring and negotiating purposes. If the importer were allowed to present the declaration anytime after entry and the information reveals a different country of origin from that reported at the time of entry the trade statistics would reflect incorrect information. Also, the additional work involved in backlogging entries and the double handling of documents is too great to permit bonding for the declaration. With elimination of the cost data requirement, there appears little reason why the importer would be unable to provide the declaration at the time of entry. Consequently, the declaration (like the visa or export license) will not be treated as a missing document for which a bond may be filed.

The European Economic Community (EEC) should be considered as a single entity for purposes of filing the declaration thereby permitting the use of the single country declaration for products made in several EEC countries according to some commenters. Other commenters made the same recommendation with respect to the Nordic countries of Finland, Norway and Sweden.

Customs can not adopt this suggestion since a single country of origin must be determined for each imported article. The detailed declaration is necessary to make this determination when several countries are involved in the production of the article. Further,

when negotiating textile agreements the U.S. does so with individual countries and not associations of countries.

Other commenters recommended that a third declaration be added for use when goods are cut and sewn in one country from fabric imported from another country. As opposed to this, another commenter wanted to eliminate the declaration requirement in these cut and sew operations.

Even though it may appear that there is no doubt as to the identity of the country or origin in these cases, it is still the responsibility of the Customs officer to make that determination. This can only be done if he has all the facts. Accordingly, Customs has not adopted either suggestion.

The declaration requirement is a non-tariff barrier according to several commenters.

Customs believes the requirement to file a declaration serves a legitimate purpose in ensuring that the correct country of origin is identified for each shipment. Rather than being a non-tariff barrier it will enable the manufacturer, importer and Customs to be certain of the country of origin and facilitate the release of goods to the importer.

The determination of the country of origin is being transferred exclusively to U.S. authorities according to some commenters. These commenters believe the regulations give substantial discretion to individual U.S. Customs officers and will lead to subjective judgments being made.

Customs officers have always had the final responsibility and authority for determining the country of origin of imported merchandise. The interim regulations did not change that responsibility. In fact, the regulations codify court decisions and Customs administrative rulings thereby allowing greater certainty by all parties in the determination of the country of origin. Further, the district director's decision on origin, if protested, is subject to review by higher authority.

Other commenters stated that trim (underlinings, loops, buttons, sways, tapes, zippers, etc.) should not have to be reported on the declaration as they are insignificant compared to the assembly of the overall garment.

Customs agrees that it is unlikely that trim will be a consideration in determining the country of origin. However, the identification of which items constitute trim is a matter for Customs to determine through the administrative ruling process. This should not be the subject of regulations. Customs has previously stated that trim need not be reported when it is from a country not directly concerned with the manufacture of the product. However, non-textile materials (not trim) must be reported on the declaration.

Many manufacturers ship identical merchandise over extended periods of time and must make repetitive filings of the same declaration. This serves no purpose according to one commenter who recommended that the district director be authorized to waive the

production of the declaration. In the alternative the commenter recommended that the importer be permitted to submit one declaration for each product and have the responsibility for updating the data.

Adoption of this recommendation could result in non-uniform application by the various Customs field offices. In addition, it would require each office to keep a separate declaration on file for the thousands of textile manufacturers, exporters, importers, and styles and types of merchandise being imported. This increased workload would be unacceptable. Finally, each entry of merchandise must stand on its own for entry admissibility purposes.

Where the value of material originating in a second country is *de minimis,* (*e.g.* 5 percent) one commenter believes the short form (single country) declaration would be appropriate. An example of this *de minimis* principle would be where a small label on the textile article is produced in a second country.

Customs is opposed to attempting to establish a *de minimis* criterion at this time. In order to determine the origin of the material that was used in the article Customs must have all pertinent facts. At some later date it may be appropriate to issue administrative guidelines with respect to the reporting of trim and other minor parts of garments.

According to one commenter shipments of textiles and textile products should be detained only when Customs can demonstrate a clear likelihood that the country of origin reflected in the declaration and/or export license or visa is incorrect.

This suggestion would place an unacceptable burden on Customs. It is incumbent upon the importer to provide the necessary documentary proof of origin.

Several other commenters maintained that requiring the declaration will cause delays in the release of shipments to importers.

With the elimination of the cost requirement from the declaration in the final rule, it should be easy to comply with the declaration requirement. The importer should be able, in most instances, to supply the information, without consulting the manufacturer or exporter. Consequently, delays in releasing shipments should be relatively rare.

Another commenter suggested that Customs allow the use of the single country of origin declaration when raw materials are imported into a country and all manufacturing operations are performed in that country.

Customs has already liberalized the reporting requirements by saying that in most instances, in regard to completed garments the information on the declaration should go back as far as the manufacture of the fabric. In regard to fabric, information on the yarn is required, and if yarn is being imported, the declaration should provide information on the fibers. This information is necessary only if

the materials at the preceding stage were imported into the country of manufacture.

The declaration, according to other commenters, should be amended to require only a simple statement of the country of origin. Customs publication and clarification of the criteria will enable most manufacturers, exporters or importers to declare the correct origin of their products. Companies seeking to avoid quota restrictions will not be deterred by the declaration requirements. The commenters maintain that a single statement of country of origin, subject to Customs audit, will relieve Customs officials of the burden of reviewing the information that must be submitted.

Requiring only a simple statement of origin by the manufacturer would nullify the intent of the regulations which is to provide Customs with sufficient information to make the determination of where the final substantial transformation took place. Far from relieving Customs of a burden the suggestion would require further investigation to make this determination.

Still other commenters maintain that the certificate of origin issued by the exporting country provides a guarantee that appropriate officials of that country have determined the correct country of origin. This certificate should be accepted in lieu of the declaration.

Only U.S. Customs can make the final country of origin decision based on judicial and administrative precedent. The certificate of origin does not provide the information necessary to make that determination.

Customs has received numerous inquiries from the importing public regarding whether a declaration is required with an informal entry. In light of the concern in this area a new paragraph (h) has been added to section 12.130 which states that while a declaration is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The provision further states that the filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§ 12.131 and 143.22, Customs Regulations (19 CFR 12.131, 143.22).

While no comments were received on section 12.130(f) of the interim regulations (this section has been redesignated as section 12.130(i) in the final rule) which relates to the date of exportation, Customs believes it worthwhile to repeat the information set forth in the interim regulation relating to the placement of date of exportation data on the Customs Form 7501, Entry/Entry Summary.

The Customs Form 7501, was revised by T.D. 84-129 which was published in the Federal Register on June 5, 1984 (49 FR 23161). As of January 1, 1985, the new Customs Form 7501 has been in use. On the revised form, the date of exportation, as defined by section 12.130, for quota, visa or export license requirements and statistical purposes, will be listed in block 34, the TSUSA, ADA/CVD, IRC

rate, and/or visa number block, below the identified visa number. If a visa or export license is not required for the merchandise the date of exportation will be the last item identified for each line item. The alphabetical designation "DOE" will be placed in front of the identified date of exportation.

The foregoing does not change or modify the date of exportation required to be placed in the date of exportation block on the Customs Form 7501.

Even though the date of exportation appears on the revised Customs Form 7501 in block 34, based upon Customs review it has been determined that a need exists for this data on the declaration. Accordingly, Customs has modified the declaration forms to require the date of export from the first country and any subsequent country where further manufacturing and/or processing operations are involved. The final determination of which country is the country of origin or quota/visa purposes, i.e., whether a substantial transformation has taken place in this regard, is the responsibility of Customs and cannot be delegated to the importer. Listing these dates of export on the textile declaration provides Customs with necessary data to verify the importer's date of export declaration on the CF 7501. It insures that Customs will be able to furnish the Commerce Department with more accurate trade statistics for trade policy purposes as well as for its own trade enforcement purposes. At the same time, this requirement benefits the importer since he will seldom have to obtain further information in this matter if Customs questions the date of export shown on the Customs Form 7501.

It has become apparent that a cause of concern to both importers and Customs field officers is the problem of possible delays in the release of non-MFA textiles and textile products from Customs custody. This is due to uncertainties in identifying merchandise subject to the MFA for which a textile declaration is required to be filed prior to release of merchandise and merchandise not subject to the MFA for which, under the interim regulations, no declaration is required.

To assist Customs in distinguishing between the two classes of merchandise, Customs has decided to require the submission of a negative declaration, prior to release of the shipment, for products not subject to section 204, Agricultural Act of 1956.

Customs examination of merchandise, document review and timely release of cargo will be facilitated by use of the negative declaration. The uncertainty over whether a declaration is required will be removed and the number of shipments detained for documentation purposes and those shipments ordered to be redelivered to Customs will be greatly reduced. This new declaration is set forth in section 12.130(f)(3) of the final rule.

Textile Shipments Under $250

A new section 12.131 was added to Part 12 by the interim regulations. This section requires that separate shipments of textiles and textile products, including samples, the country of origin of which is a country subject to visa or export license requirements, arriving in the customs territory of the U.S. for one consignee on the same conveyance on the same day, the combined value of which is over $250, to be entered under a formal entry. A consignee for purposes of this section is the ultimate consignee and does not include a freight forwarder or Customs broker not importing for its own account.

These provisions were necessary to prevent the splitting of shipments to circumvent visa or export license requirements. Importers were frequently entering shipments well in excess of $250 shipped on the same carrier, on the same day, from the same country, but from allegedly different manufacturers and using the informal entry procedures for the split shipments.

For purposes of this section, the interim document stated that separate unincorporated divisions or departments of the same U.S. corporation or company will be treated as one consignee for visa or export license purposes. It was further indicated that separate U.S. corporations of the same U.S. conglomerate will generally be treated as separate entities and therefore, separate consignees. Other forms of business organizations will be handled on a case-by-case basis. It was stated that Customs officers will look at the facts and circumstances involved in the importation before making a final decision.

Numerous comments were received in response to this provision. One commenter stated that textile shipments under $250 each for separate divisions of the same corporation arriving in the U.S. on the same carrier, the same day, from the same country should be treated as importations for separate consignees for visa or licensing purposes. According to the commenter there could be freight consolidations for economy in shipping cost only.

Section 12.131 is necessary to prevent the splitting of shipments to circumvent visa or export licensing requirements. The bilateral textile agreements also require that shipments for the same consignee valued over $250 require a formal visa or export license. In addition, 19 U.S.C. 1484 states that all of the merchandise arriving in the U.S. on the same conveyance for the same consignee must be entered on one entry. Lastly, since separate unincorporated divisions of the same corporation are not separate legal entitles, they may not be treated as separate consignees.

While freight consolidations by exporters to reduce cost is an important factor for them, it cannot take precedence over the intent of the bilateral agreements and statutory requirements of 19 U.S.C. 1484.

However, if a freight forwarder is a consignee, for purposes of these textile provisions, he may designate a Customs broker to file a consolidated formal entry (where separate under $250 shipments to various ultimate purchases are involved). The entry must be accompanied by a visa(s) in the case of countries subject to visa requirements. If the freight forwarder is not the consignee for purposes of these textile provisions, he may not designate a customs broker to file either a consolidated formal entry or separate informal entries for these under $250 shipments. In the latter case, the various ultimate purchasers must make their own arrangements for entry of their merchandise.

One commenter suggests that the section 12.131 definition for consignee should only include divisions of the same company or corporation where such divisions are importing goods on the same conveyance on the same day whose combined value totals more than $250 and fall in the same textile category number. Furthermore, where information for such shipments for separate divisions of the same corporation indicates that these divisions are operating independently of each other, e.g., separate trade names, distinctive differences in the goods, or separate imported samples for each division, the "one consignee" definition of this section should not be followed.

The bilateral textile agreements, the statutory language of 19 U.S.C. 1484, and the fact that there is no showing of separate legal entities involved under the circumstances set forth by the commenter argue forcefully for the enforcement of the "one consignee" definition found in section 12.131.

Section 12.131 according to one commenter should be amended to require formal entry only in instances where shipments from the same manufacturer arrive on the same day, on the same conveyance for the same U.S. consignee, and Customs determines that the shipments are intended to be consolidated for commerical sale.

The statutory language of 19 U.S.C. 1484 precludes the adoption of the commenter's suggestion.

The regulations for consolidating shipments are costly and overly broad according to another commenter.

The need to effectively and uniformly enforce the bilateral textile agreements and the formal entry requirements for importations pursuant to 19 U.S.C. 1484 dictate Customs policy in this matter. Moreover, because of recent attempts to circumvent quota/visa requirements by splitting shipments the necessity to take appropriate action to prevent these violations has become evident.

In light of the foregoing discussion and analysis Customs has concluded that no change in the provisions of section 12.131, is warranted. Accordingly, the section is adopted in the form set forth in T.D. 84-171 in the August 3, 1984 Federal Register document (49 FR 31248 at 31253).

IN BOND TRANSPORTATION

In the interim regulations it was stated that because of the numerous instances identified by Customs in which the provisions of the Customs Regulations relating to in-bond transportation has been used to frustrate and circumvent the textile products visa or export license requirements, district directors were advised to strictly enforce the provisions of section 18.11(h), Customs Regulations (19 CFR 18.11(h)). To insure the applicability of the section 18.11(h) requirements, section 18.11(e) was amended to incorporate the provisions of section 18.11(h). In addition, section 18.11(e) was amended to require the visa or export license, if applicable, to be presented with the entry. Section 6.18, Customs Regulations (19 CFR 6.18), relating to documentation for transit air cargo, was amended to cross-reference the requirements of sections 18.11 (e) and (h).

Section 141.52, Customs Regulations (19 CFR 141.52), sets forth the circumstances under which district directors may authorize separate entries for different portions of all the merchandise arriving on one vessel or vehicle and consigned to one consignee. Section 143.21, Customs Regulations (19 CFR 143.21), sets forth the types of merchandise for which an informal entry may be used and section 143.22, Customs Regulations (19 (CFR 143.22), sets forth the circumstances for which a formal entry may be required. Since both sections 141.52 and 143.21 have been cited by importers as justification for attempts to circumvent the visa or export license requirements, sections 141.52 and 143.22 were amended by the interim regulations to indicate that use of the provisions of section 141.52 and section 143.21 will be denied if use of the informal entry provisions would prejudice import admissibility enforcement efforts (i.e. visa or export license requirements). A cross-reference to the requirements of sections 141.52 and 143.22 was included in section 143.21.

Customs received numerous comments in response to the solicitation of comments provision of the interim regulations regarding the presentation of the visa or export license prior to movement of textiles and textile products under the in-bond procedures. The Federal Register document containing the interim Customs regulations indicated that during the comment period an ongoing review would be made to determine if any situation arose which required action before the final rule was published. Based upon this ongoing review of public comments, it was concluded that compliance with this requirement of the interim regulations would be difficult. Accordingly, Customs deleted the requirement by notice published in the Federal Register on September 28, 1984, as T.D. 84-207 (49 FR 38245).

Further, the commenters expressed concern about the example of the rated invoice used in the interim regulations to indicate the type of evidence the district director could use to satisfy himself of

the approximate correctness of the value and quantity stated in the in-bond entry. The rated invoice was chosen as an example not because of a need for this particular document but because it contained most of the information necessary for Customs to accurately assess the risk of possible diversion during the in-bond movement. Because the example generated so much adverse comment and concern, it was decided to delete it from the interim regulation and specifically list, by way of example, the information which Customs will use in making the determination of whether or not to examine the merchandise and whether or not to approve the in-bond movement. This information was also published in the September 28, 1984 Federal Register document. It includes the following:

(a) Detailed quantity description (e.g., 14 cartons, 2 dozen per carton),

(b) Detailed description of the textiles products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters),

(c) Net weight of the textiles or textile products, (including immediate packing but excluding pallets),

(d) Total value of the textiles or textile products,

(e) Manufacturer or supplier,

(f) Country of origin,

(g) Name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned, and

(h) Harmonized code tariff number (when available).

It was stated that the harmonized code tariff number, if provided, would greatly assist Customs in determining the proper classification of the merchandise and the visa requirements. Customs further pointed out that not providing any one item or all of the listed information would not in and of itself result in a denial of the in-bond movement or examination of the merchandise. It would, however, be a factor considered by the district director along with all other facts and circumstances available as to the risk to the revenue, potential for diversion of the merchandise, and proper enforcement of the Textile Import Program.

Customs stated that the information could be provided by the carrier or his agent or the importer. If this information is available on existing documentation such as an invoice, a bill of lading, etc., providing a copy of that document would assist Customs in the consideration of whether or not to approve the movement or to examine the merchandise. In lieu of the foregoing, it was stated that the information could be included on the in-bond document itself. This flexible approach would allow the importer to determine the manner in which the information would be supplied.

In addition, Customs also decided that to effectively enforce the interim regulations and ensure that shipments of textiles and textile products arrive intact, no diversion from the destination, as shown on the in-bond document, would be allowed without the per-

mission of the district director at the port of origin of the in-bond movement. This requirement which was included in the September 28, 1984, Federal Register notice as an amendment to section 18.5, Customs Regulations (19 CFR 18.5), provides Customs with the administrative control over shipments of textiles and textile products necessary to effectively ensure that those products subject to quota are not diverted into the commerce of the U.S. in violation of the quota.

One commenter believed that the change in section 18.5 was superfluous. This commenter was under the impression that diversions are not allowed for cargo moving in-bond.

This is not the case. Cargo entered for in-bond movement may be diverted to a port other than that shown on the in-bond documents. Since Customs will be examining selected textile shipments prior to in-bond movement, it was essential to the enforcement effort that the cargo be delivered to the port originally designated on the in-bond documents. This interim amendment now requires that diversions be approved by the district director at the port of origin of the in-bond movement.

Many commenters interpreted the interim regulations to mean that Customs would examine all textiles at the port of arrival. Customs does not intend to examine all textiles at the port of arrival. Customs has been examining and will continue to examine selected shipments at the port of arrival. These examinations will be based upon the information available to Customs with regard to the cargo, the carrier involved, the mode/method of transportation, and the importer of record. Cargo that is described sufficiently for the district director to determine the duty and taxes will remain in the custody of the importing carrier or his agent and will not generally be subject to examination at the port of arrival.

Some commenters questioned the need for a specific list of requested information. In the September 28, 1984, Federal Register document Customs removed the requirement for presentation of certain documents prior to approval of the in-bond movement. In its place Customs listed under section 18.11(e) the information felt necessary for determining whether or not an examination prior to movement would be necessary. The commenters stated that while it was helpful to remove the requirement, when viewed in connection with statements by Customs in the documents removing the requirement that certain types of movements will be considered low risk and therefore exempt from the request for information substituted for the requirement, importers will not know when and if they should supply the requested information. This will result in confusion in the transportation and brokerage communities according to the commenters. Some commenters believed the list should be removed from the regulations.

Customs agrees with the commenters that some uncertainty may result in not knowing if the information may or may not be re-

quested. However, it is better for the public to be aware of what information Customs needs to determine whether or not to approve the in-bond movement. Accordingly, the list has been retained.

In light of the foregoing the regulations amendments relating to sections 6.18(d), 141.52, 143.21 and 143.22 (19 CFR 6.18(d), 141.52, 143.21 and 143.22) contained in T.D. 84-171 which was published in the Federal Register on August 3, 1984 (49 FR 31248) are adopted without change. Further, the amendments made to sections 18.5(a), 18.5(f) and 18.11(e) (19 CFR 18.5(a), 18.5(f) and 18.11(e)) by T.D. 84-207, published in the Federal Register on September 28, 1984, are also adopted without change.

Bonded Warehouses and Foreign Trade Zones

Some importers have been using the bonded warehouse to circumvent or frustrate the visa or export license requirements. For example, suits which are in a specific textile category from a country subject to visa or export license requirements were entered into warehouse and separated into coats and pants which are in different textile categories. To prevent this type of practice which frustrates and circumvents agreements, section 144.38, Customs Regulations (19 CFR 144.38), which relates to withdrawals from warehouse for consumption was amended by the interim regulations by adding a new paragraph (f) relating to textiles and textile products. The new subsection indicated that textiles and textile products subject to visa or export license requirements in their condition at the time of importation may not be withdrawn from warehouse for consumption if, during the warehouse period, there has been a change by manipulation or other means (1) in the country of origin of the merchandise, (2) to exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or (3) from one textile category to another textile category.

Section 19.11(g) Customs Regulations (19 CFR 19.11(g)), which relates to withdrawals from warehouse, was also amended to cross-reference the restrictions contained in section 144.38 on withdrawal for consumption of manipulated textiles and textile products.

The interim regulations published on August 3, 1984, also contained an amendment to the foreign-trade zones regulations found in Part 146, Customs Regulations (19 CFR Part 146), to prevent use of foreign-trade zones to frustrate or circumvent quota or visa or export license requirements. The provision set forth in § 146.49 specifically provided that textiles and textile products admitted into a foreign-trade zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation if entered for consumption rather than admitted to a foreign-trade zone, may not be subsequently transferred into the customs territory for consumption if during

the time the merchandise is in the foreign-trade zone there has been a change by manipulation, manufacture, or other means.

(a) In the country of origin of the merchandise as defined by section 12.130 of the interim regulations,

(b) To exempt for quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(c) Fron one textile category to another textile category.

Based upon public comment and after consultation with the Foreign-Trade Zone Board, it was decided to modify the foreign-trade zone provisions of the interim regulations to include a phrase which recognized the existing statutory authority of the Foreign-Trade Zones Board. The change was set forth as an amendment to § 146.49 of the interim regulations by Federal Register notice on September 28, 1984 as T.D. 84-207 (49 FR 38245).

One commenter indicated that the regulations would exclude manipulation of goods inside bonded warehouses and foreign trade zones that would change the duty classification of goods when they are brought into U.S. customs territory.

The exclusion in the interim regulations does not deal with tariff classification and dutiability, but rather with quota and/or visa status and admissibility. The only changes excluded are those affecting the textile category, country of origin, or exemption from quota and/or visa status. Other kinds of changes in tariff classification would continue to be permitted.

One commenter indicated it was unsure whether the Foreign-Trade Zones Board may approve an exception from the exclusion if it is in the public interest.

As pointed out above, the interim regulations were amended on September 28, 1984 by T.D. 84-207 to recognize the authority of the Foreign-Trade Zones Board in administering the Foreign Trade Zones Act, which could authorize exceptions in the public interest. However, Executive Order 12475 established a presumption that it is in the public interest not to allow the operations set forth in section 146.49 of the interim regulations. Accordingly, any person seeking an exception to section 146.49 would have a substantial burden of proof to overcome this presumption.

Another commenter stated that the exclusion of textile manufacturing and manipulation sets an unfortunate precedent that could lead to fragmentation of duty preference and deferral laws by rules and regulations created under pressure from protectionist special interest groups.

The exclusion in the interim regulations was made pursuant to section 204 and Executive Order 12475. The basis for an exception for other commodities would have to be found in legislation, executive order or proclamation.

Another commenter stated the exclusion would even cover the manufacture of wearing apparel from piece goods, nullifying one of

the main purposes of foreign-trade zones, which is to encourage U.S. manufacturing. The commenter opined that textile manufacturing operations that result in products of the U.S. should not be excluded from foreign-trade zones.

The exclusion is not against textile manufacturing in zones, but against the entry for consumption in the U.S. of textile articles which would amount to a circumvention of quota and/or visa requirement. Zone firms may continue to manufacture textile articles for consumption if there is no circumvention of the quota, or for exportation in any case. If it is deemed to be in the public interest in selected instances for merchandise to be manufactured in a zone for U.S. consumption, the Foreign-Trade Zones Board may specifically grant an exception from the exclusion.

In light of the foregoing, the regulation amendment relating to bonded warehouses contained in section 144.38(f) as set forth in T.D. 84-171, which was published in the Federal Register on August 3, 1984 (49 FR 31248 at 31253), is adopted without change. In addition, the amendment made to section 146.49 relating to foreign-trade zones as set forth in T.D. 84-171 and amended by T.D. 84-207, which was published in the Federal Register on September 28, 1984 (49 FR 38245), is adopted without further change.

Regulations Violate MFA

A few commenters expressed concern that the country of origin regulations violate the MFA and the various bilateral agreements negotiated by the U.S. under the aegis of the MFA to limit textile imports. This concern was also raised by the plaintiffs seeking to enjoin implementation of the interim regulations in *Mast Industries Inc., et al.* v. *Regan, et al.*, —— C.I.T. —— Slip Op. 84-111 (October 4, 1984). The plaintiffs therein argued that because "the interim regulations issued by Customs violate the MFA and the bilaterals and, therefore, do not 'carry out' [those] agreements," the "interim regulations are [invalid because they are] ultra vires." The *Mast Industries* court dismissed that argument, holding that the interim regulations were validly issued pursuant to the authority delegated to the President by section 204, the statute upon which the entire U.S. textile import program rests.

The *Mast Industries* decision which sustained the President's authority to promulgate origin regulations pursuant to section 204 is wholly consistent with the principles underlying our international agreements. The MFA, as well as any bilateral agreements negotiated thereunder, is expressly "determined to have full regard to the principles and objectives of the General Agreement on Tariffs and Trade (GATT)."

The GATT grappled with the issues involved in a country's determinations of origin in the 1950's but did nothing then and has not since been willing to define any specific or uniform rule, recognizing the essentially subjective nature of criterion of "substantial

transformation" or any other criterion used for the determination of origin. The definitive statement by GATT draftsmen in 1947 on this issue has not, therefore, been changed by any subsequent GATT decision, and reflects the current status of origin rules as follows:

> It is within the province of each importing member country to determine, in accordance with the provisions of its law, for the purpose of applying the most-favored-nation provision, whether goods do in fact originate in a particular country. (UN DOC. EPCT/174 at pg. 3 (1947))

This right of each GATT member to determine origin on its own has been recognized with respect to all GATT agreements or obligations that depend on the origin of products. Consequently, there is no GATT, MFA, or bilateral agreement provision defining country of origin or restricting such definition. These agreements reflect the long-standing right of GATT members to determine their own origin rules.

Impairment of Contracts

Some commenters alleged that the interim regulations are a retroactive impairment of contracts in violation of the impairment of contracts clause of the U.S. Constitution. The court in *Mast Industries* addressed this issue and held that the "impairment of contracts clause has never been interpreted to apply to the federal government. See *Washington Star Co.* v. *International Typographical Union Pension Plan*, 729 F. 2d 1502, 1507 (D.C. Cir. 1984)."

Customs, however, recognized that a problem existed with respect to existing contracts. Accordingly, to alleviate unnecessary hardships on persons in the U.S. who had made binding commitments for a fixed quantity of merchandise prior to publication of the interim regulations, the effective date for that merchandise was delayed from September 7, 1984 to October 31, 1984 by T.D. 84-190, published in the Federal Register on August 29, 1984 (49 FR 34199).

Unconstitutional Delegation of Authority

Other commenters contended that section 204 is an unconstitutional delegation of legislative authority to the President. The Court in *Mast Industries* disagreed and held that the authority of Congress to regulate foreign commerce and delegate significant portions of that power to the Executive is well established. Statutes granting broad discretion to the President to implement trade agreements are common and often contain language similar to section 204. The Court stated that in a constitutional delegation of powers Congress must state a policy or objective for the President to execute and also that it must establish a standard that makes clear when action is proper. The congressional policy expressed in section 204 is the limitation of the importation of textiles and agri-

cultural commodities into the U.S. Where Congress has given the President discretion in delegating authority in international trade, the courts have uniformly sustained action taken by the Executive Branch against a claim that it has exceeded the delegated authority.

Accordingly, the court held that the President had the authority to issue the interim regulations and further held that the President acted within the scope of the authority constitutionally given him by Congress.

Inapplicability of Notice

Public notice is inapplicable to the regulations relating to country of origin and manipulation of textiles because they are promulgated pursuant to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), and are thus within the foreign affairs function of the U.S. and the foreign affairs exemption of 5 U.S.C. 553(a)(1). These regulations are necessary to prevent circumvention or frustration of multilateral and bilateral agreements to which the U.S. is a party and to facilitate efficient and equitable administration of the U.S. Textile Import Program as authorized in section 204. For the above reasons pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are impracticable, unnecessary and contrary to the public interest. The regulations relating to in-bond transportation are within the general statements of policy exemption to 5 U.S.C. 553 found in 5 U.S.C. 553(b)(A) and are thus exempt from prior notice and comment. The authority to promulgate these regulations was delegated by the President to the Secretary of the Treasury by Executive Order 12475.

Executive Order 12291

This regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document because the provisions of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable to these regulations. However, in the interim regulation Customs requested public comment on the effects, with numerical estimates, of the amendments on costs, profitability, competitiveness, and employment in small entities. While numerous commenters alleged economic impact little economic data was provided.

PAPERWORK REDUCTION ACT

The interim regulation is subject to the Paperwork Reduction Act of 1980, Pub. L. 96-511. Accordingly, applicable sections of the interim regulation have been cleared by the Office of Management and Budget and assigned control number 1515-0140.

DRAFTING INFORMATION

The principal author of this document was John Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspection, imports, textile products and apparel.

AMENDMENTS TO THE REGULATIONS

Part 12, Customs Regulations (19 CFR Part 12) is amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: February 27, 1985.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, March 1, 1985 (50 FR 8710)]

PART 12—SPECIAL CLASSES OF MERCHANDISE

Part 12 is amended by revising section 12.130 to read as follows:

TEXTILES AND TEXTILE PRODUCTS

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) include merchandise subject to General Headnote (3)(g)(iii)(C)(1) of the Tariff Schedules of the U.S. (TSUS) (19 U.S.C. 1202) and merchandise:

(1) In chief value of cotton, wool, man-made fibers, or blends thereof in which those fibers, in the aggregate, exceed in value each other single component fiber thereof, or

(2) In which either the cotton context or the man-made fiber content equals or exceeds 50 percent by weight of all component fibers thereof, or

(3) In which the wool content exceeds 17 percent by weight of all component fibers thereof, or

(4) Containing blends of cotton, wool, or man-made fibers, which fibers, in the aggregate, amount to 50 percent or more by weight of all component fibers thereof, and

(5) Which is classified in the tariff item numbers provided for in General Headnotes (3) (g)(iii)(C) (2) or (3) (g)(iii)(E), TSUS.

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c), a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However, except as provided in paragraph (c), a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

(c) *Applicability to U.S. articles sent abroad.* Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, as amended. In order to have a single definition of the term "product of" and, therefore, a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Headnote 2, Part 1, Schedule 8, TSUS, may not, upon its return to the U.S., be considered a product of the U.S.

(d) *Criteria for determining country of origin.* The criteria in subparagraph (1) and (2) of this paragraph shall be considered in determining the country of origin of imported merchandise. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity,

(ii) Fundamental character or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(ii) The time involved in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iii) The complexity of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(v) The value added to the article or material in each foreign territory or country, or insular possession of the U.S., compared to its value when imported into the U.S.

(e) *Manufacturing or processing operations.* (1) An article or material usually will be a product of a particular foreign territory or country, or insular possession of the U.S., when it has undergone prior to importation into the U.S. in that foreign territory or country, or insular possession any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession, into a completed garment (*e.g.* the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of a particular foreign territory or country, or insular possession of the U.S. by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commerical use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (*e.g.* washing, drying, mending, etc.) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textile products.* All importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, shall be accompained by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) below. All importations of textiles and textile products covered by General Headnotes (3)(g)(iii)(C)(2) or (3)(g)(iii)(E), TSUS, and not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) below. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each invoice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s).

(1) *Single foreign territory or country, or U.S. insular possession.* Textiles or textile products which are wholly the growth, product, or manufacture or a single foreign territory or country, or insular possession of the U.S., or assembled in a single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. shall be identified in a declaration which is substantially in the following form:

SINGLE COUNTRY DECLARATION

I, _____ (name), declare that the articles listed below and covered by the invoice or entry to which this declaration relates are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or were assembled in the single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. as identified below. I declare, that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A _____ (country*)
B _____ (country*)
C _____ (country*)
D _____ (country*)
etc.

Marks of identification, numbers	Description of article and quantity	Country* of origin	Date of exportation

Date.....
Name .....
Signature .....
Title .....
Company .....
Address.....

*Country when used in this declaration includes territories and U.S. insular possessions. If the entry or invoice to which the declaration relates covers merchandise from more than one country each country will be identified in the declaration by the alphabetical designation appearing next to the named country. In the case of an assembly operation of U.S. components, both the country of assembly and the U.S. shall be reported (e.g. Haiti/U.S.) along with the date of exportation from the country of assembly.

(2) *More than one foreign territory or country, or U.S. insular possession.* Textiles and textiles products which were subjected to manufacturing or processing operations in, and/or incorporate materials originating in more than one foreign territory or country, or an insular possession of the U.S. or were assembled in, and/or incorporate fabricated components which are the product of the U.S. and more than one foreign territory, country or insular possession of the U.S., shall be identified in a declaration which is substantially in the following form:

MULTIPLE COUNTRY DECLARATION

I, _____ (name), declare that the articles described below and covered by the invoice or entry to which this declaration relates were exported from the country* identified below on the dates listed and were subjected to assembling, manufacturing or processing operations in, and/or incorporate materials originating in, the foreign territory or country* or countries*, or the U.S. or an insular possession of the U.S., identified below. I declare that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A _____ (country*)
B _____ (country*)
C _____ (country*)
D _____ (country*)
etc.

Marks of identification, numbers	Description of article and quantity	Description of manufacturing and/or processing operations	Date and country of manufacture and/or proces	
			Country	Date of exportati

Date .....
Name .....
Signature .....
Title .....
Company .....
Address.....

*Country or countries when used in this declaration includes territories and
the above declaration by the alphabetical designation appearing next to the name

ry of processing	Materials		
ate of ortation	Description of material	Country of production	Date of exportation

s and U.S. insular possessions. The country will be identified in named country.

(3) *Textiles and textile products not subject to section 204.* Textiles and textile products not subject to section 204, Agricultural Act of 1956, as amended (see paragraph (a) of this section for products subject to section 204), shall be accompanied by the declaration set forth below:

NEGATIVE DECLARATION

I, _____ (name), declare that the articles described below and covered by the invoice or entry which this declaration relates are not subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

Marks of identification, numbers	Description of article and quantity	Country of origin

Date .....
Name .....
Signature .....
Title .....
Company .....
Address .....

(g) *Incomplete or insufficient information.* If the district director is unable to determine the country of origin of an article from the information set forth in the declaration, the declarant shall submit such additional information as requested. Release of the article from Customs custody will be denied until the determination is made based upon the information provided or the best information available. In this regard if incomplete or insufficient information is provided, the district director may consider the experience and costs of domestic industry in similar manufacturing or processing operations.

(h) *Shipments covered by an informal entry.* While a declaration is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§ 12.131 and 143.22 of this chapter.

(i) *Date of exportation.* For quota, visa or export license requirements, and statistical purposes, the date of exportation for textiles or textile products, subject to section 204, Agricultural Act of 1956, as amended, shall be the date the vessel or carrier leaves the last

port in the country of origin, as defined by this section. Contingency of diversion in another foreign territory or country shall not change the date of exportation for quota, visa or export license requirements or for statistical purposes.

(R.S. 251, as amended, section 484, 46 Stat. 722, as amended, section 624, 46 Stat. 759, section 204, 70 Stat. 200, as amended (19 U.S.C. 66, 1484, 1624, 7 U.S.C. 1854) OMB approval #1515-0140)

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19 CFR Parts 141, 143, 145, 147, 172, 177

(T.D. 85-39)

Customs Regulations Amendments Relating to Elimination of the Special Customs Invoice, Customs Form 5515

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to invoices by eliminating the Special Customs Invoice and requiring that commercial invoice identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the facts of the transaction.

Because of (1) statutory amendments which simplified the methods used to determine the value of imported merchandise, (2) the fact that the information required on the Special Customs Invoice also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, there is no longer any need to require the Special Customs Invoice.

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-535-4161).

SUPPLEMENTARY INFORMATION:

Background

This document amends Parts 141, Customs Regulations (19 CFR Part 141), relating to invoices, to eliminate the Special Customs Invoice, Customs Form 5515 (SCI), and require that the commercial invoice identify by name a responsible individual who has knowledge, or can readily obtain knowledge, of the facts of the transaction. Conforming amendments are made to other parts of the Customs Regulations referencing the SCI and the commercial invoice.

Section 141.83, Customs Regulations (19 CFR 141.83), provides that a SCI shall be filed for each shipment of merchandise import-

ed into the U.S. if the purchase price exceeds $500 and the rate of duty is dependent in any matter upon the value of the merchandise. The SCI is required for merchandise not imported pursuant to a purchase, or agreement to purchase, if the value is over $500.

The general information required by § 481(a), Tariff Act of 1930 (19 U.S.C. 1481(a)), to be shown on the SCI and all other invoices for merchandise imported into the U.S., is set forth in § 141.86(a), Customs Regulations (19 CFR 141.86(a)).

Pursuant to § 481(d), Tariff Act of 1930 (19 U.S.C. 1481(d)), such exemptions from the requirements of 19 U.S.C. 1481(a), may be made by the Secretary of the Treasury as he deems advisable.

Furthermore, § 484(b), Tariff Act of 1930, as amended (19 U.S.C. 1484(b)), provides that the Secretary shall provide by regulation for the production of a certified invoice (i.e. SCI) for imported merchandise when he deems it advisable and the terms and conditions under which such merchandise may be permitted entry without the production of a certified invoice.

Because of (1) Pub. L. 96-39, the "Trade Agreements Act of 1979," which simplified the methods used to determine the value of imported merchandise, (2) the fact that the information required on the SCI also appears on the commercial invoice presented at the time of entry, and (3) increased sophistication on the part of the importing community, Customs believed the SCI no longer served a useful purpose. Accordingly, on February 1, 1982, instructions were sent to Customs personnel advising that effective March 1, 1982, a SCI would not be required when a signed commercial invoice is provided which contains the information required by § 141.86, Customs Regulations. The instructions further indicated that when a signed commercial invoice was not provided the SCI could still be waived in accordance with § 141.92, Customs Regulations (19 CFR 141.92).

However, on August 20, 1979, the U.S. accepted the "Recommendation of the Customs Co-operation Council Concerning Customs Requirements Regarding Commercial Invoices", which states that Council members should refrain from requiring a signature, for customs purposes, on commercial invoices. Accordingly, it was decided that the present practice of accepting a signed commercial invoice should be changed to require that the name of a responsible individual who has knowledge of the transaction be placed on the commercial invoice.

Therefore, on April 20, 1984, a notice proposing to amend the Customs Regulations was published in the Federal Register (49 FR 16803), soliciting public comments. It also was proposed to incorporate the present requirements of § 141.86(j) (2), (4), and (8), relating to country of origin of the merchandise, exchange rate and goods and services furnished, respectively, which are not included in the in voice, into § 141.86(a), Customs Regulations, relating to general information required on the invoice. Eleven comments were re-

ceived in response to the notice. A discussion of these comments and our responses follow.

DISCUSSION OF COMMENTS

Comment: Requiring a name on a commercial invoice is contrary to the agreement reached by the Customs Cooperation Council (of which the U.S. is a member) that Council members should refrain from requiring a signature, for Customs purposes, on commercial invoices.

Response: We disagree. The proposed amendment asks that the name of a person who has knowledge of the transaction be shown on the invoice. A signature of an official is not required.

Comment: It would be difficult to provide Customs with the name of any single individual who has knowledge of the transaction. Many transactions are multi-invoiced, i.e., they involve numerous individuals with knowledge of only certain aspects of the transaction. Moreover, the cost and effort sustained by foreign exporters in identifying and placing names of persons with knowledge of transactions on millions of commercial invoices far exceeds any benefit to Customs.

Response: We disagree. The rule does not require the named individual to be knowledgeable of the transaction in every minute detail, but simply requires that the name of a responsible individual who has knowledge of the transaction appear on the invoice. It is reasonable to assume that there is at least one employee of an exporting firm that has general knowledge of the transaction.

Also, we do not believe that it would be costly for exporters merely to identify and type or print in the name of one individual on the commercial invoice. Customs, as well as the importer, would benefit by having a person identified to whom questions could be referred concerning the transaction.

Comment: The naming of an individual on the commercial invoice implies individual liability rather than corporate liability.

Response: We disagree that the mere placing of a name on an invoice implies liability. Placing the name on the invoice is done only for obtaining information about the transaction. The individual name may ultimately be held responsible if, after investigation, the evidence supports this finding. The assessment of liability, however, is not the purpose of the amendment.

Comment: The proposal to name an individual knowledgeable of the transaction on the commercial invoice is vague. One could conclude that the name listed on the invoice could be a broker, an employee of the importer, or an employee of the exporter, as long as that person had knowledge of the transaction.

Response: We agree. The person named on the commercial invoice should be an employee of the exporter so that, for investigative purposes, the person can be contacted quickly. The proposed amendment has been further amended to clarify this point.

Comment: Several commenters proposed that the rule regarding the naming of an individual on the invoice be amended to require the name of a responsible individual who has knowledge of *or who can readily obtain knowledge of* the facts of the transaction.

Response: We concur. The final rule includes this provision.

Comment: One commenter suggested that there should be a 6-month transition period before the SCI is eliminated because exporters have computerized documentation systems based on the use of this invoice.

Response: We disagree. Customs notified brokers and the importing/exporting community in February, 1982, that the SCI would not be required after March 1, 1982. All parties have had ample time, therefore, to adjust to the elimination of the SCI. Customs will continue, however, to accept a SCI prepared in conjunction with a commercial or pro forma invoice.

Comment: The country of origin statement on the commercial invoice is not practical inasmuch as many exporters do not know the country of origin and few problems have arisen on this matter.

Response: We disagree. The country of origin statement is extremely important considering the fact that much imported merchandise is subject to quota limitations and visa requirements. The statement would assist importers in determining the country of origin of goods, thereby alleviating possible liability on domestic importers' parts if a false country of origin were shown on the invoice prepared by the exporter. Therefore, we are retaining this provision in § 141.86(a).

Comment: It is unnecessary to include the exchange rate on the commercial invoice, as proposed in the notice.

Response: We agree. This provision has been eliminated from § 141.86(a)(7).

Comment: Proposed § 141.86(a)(11) should be revised to exclude goods or services undertaken in the U.S. and to include a provision for acceptance of annual reports for goods and services.

Response: We agree. Section 141.86(a)(11) excludes goods or services undertaken in the U.S., and it includes a provision for acceptance of annual reports for goods and services, when approved upon application to the district director.

After consideration of all the comments and further review of the matter, we have decided to adopt the proposed amendments with the modifications noted.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. The amendments remove a regulatory burden and will result in reduced cost to the importing community.

Accordingly, it is certified under the provisions of § 3, Regulatory Flexibility Act (5 U.S.C. 605(b)), that the rule will not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

The collection of information requirements contained in § 141.86(a) (10) and (11) and § 141.86(j) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504) and have been cleared by the Office of Management and Budget. They have been assigned OMB No. 1515-0120.

DRAFTING INFORMATION

The principal author of this document was Susan Terranova, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PARTS 141, 143, 145, 172, AND 177

Customs duties and inspection, Imports.

AMENDMENTS TO THE REGULATIONS

Parts 141, 143, 145, 147, 172, and 177, Customs Regulations (19 CFR Parts 141, 143, 145, 147, 172, 177), are amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: February 21, 1985.
EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, March 6, 1985 (50 FR 9610)]

PART 141—ENTRY OF MERCHANDISE

§ 141.81 [Amended]

1. The first sentence of § 141.81 is amended by removing the words "A special Customs invoice, a" and inserting, in their place, the word "A'.

2. Section 141.83 is amended by removing paragraph (a) and reserving it; removing the second sentence of paragraph (b); and revising the first sentence of paragraph (c)(1) to read as follows:

§ 141.83 Type of invoice required.

* * * * * * *

(c) *Commercial invoice.* (1) A commerical invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. * * *

3. Section 141.83(d) is amended by removing the words "Special Customs or commercial" in the paragraph heading and inserting, in their place, the word "Commercial", and removing the words "A Special Customs Invoice or a" in the first sentence and inserting, in their place, the word "A'.

4. Section 141.84 is amended by removing the words "original special Customs invoice or" in the first sentence of paragraph (a); the words "a special Customs invoice or" in the first sentence of paragraph (c); and the words "a special Customs invoice or" both times they are used in paragraph (e) and, in the second instance inserting, in their place, the word "the".

5. The first sentence of the Pro Forma Invoice form set forth in § 141.85 is amended by removing the words "special or".

6. Section 141.86 is amended by removing the words, "except the Special Customs Invoice (Customs Form 5515) (see paragraph (j) of the section)" in the first sentence of paragraph (a); removing the word "and" at the end of paragraph (a)(8); removing the period at the end of paragraph (a)(9), and inserting, in its place, a semicolon; and adding new paragraphs (a)(10) and (a)(11) to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) * * *

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g,. assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the United States are excluded. Annual reports for goods and services, when approved by the district director, will be accepted as proof that the goods or services were provided.

7. Section 141.86 is further amended by revising paragraph (j) to read as follows:

§ 141.86 Contents of invoices and general requirements.

* * * * * * *

(j) *Name of responsible individual.* Each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain, knowledge, of the transaction.

(The collection of information requirements contained in § 141.86 have been approved by the Office of Managment and Budget under Control Number 1515–0120.)

(R.S. 251, as amended, secs. 448, 481, 484, 624, 46 Stat. 714, as amended, 719, 722, as amended, 759; 19 U.S.C. 66, 1448, 1481, 1484, 1624)

PART 143—COMSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

Section 143.27 is revised to read as follows:

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

(R.S. 251, as amended, secs. 481, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 145—MAIL IMPORTATIONS

§ 145.11 [Amended]

Section 145.11 is amended by removing paragraph (c) and reserving it.

(R.S. 251, as amended, secs. 481, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 147—TRADE FAIRS

Section 147.12 is revised to read as follows:

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of Subpart F, Part 141 of this chapter.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 172—LIQUIDATED DAMAGES

§ 172.22 [Amended]

Section 172.22(b) is amended by removing the words "Special Customs Invoices or" in the paragraph heading; the words "Special Customs Invoice, Customs Form 5515, or a" in he first sentence of paragraph (b); and the words "special Customs or" in paragraph (b)(3)(i).

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

PART 177—ADMINISTRATIVE RULINGS

§ 177.2 [Amended]

Section 177.2 is amended by removing the words "a Special Customs Invoice" in the first sentence of paragraph (b)(2)(iii) and inserting, in their place, the words "an invoice".

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 484, 1624))

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 101

Withdrawal of Proposed Customs Regulations Amendment Relating to the Customs Service Field Organization—Gramercy, Louisiana

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to extend the limits of the Customs port of entry of Gramercy, Louisiana. The proposal was included as a part of a larger revision of the Customs field organization which updated and consolidated the descriptions of all ports of entry in the New Orleans Customs district. Customs periodically amends its field organization to obtain more efficient use of its personnel, facilities, and resources, but after review of public comment and further analysis of this matter, it has been determined an expansion of the port limits at Gramercy would negatively impact shippers and increase Customs workload without creating any compensating benefits to the community at large.

DATE: Withdrawal effective March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

By Federal Register notice of October 5, 1983 (48 FR 45409), Customs published a proposed rule designed to update and consolidate the description of all ports in the New Orleans Customs district. The consolidation was a part of Customs nationwide effort to obtain more efficient use of personnel, facilities and resources and to provide better service to carriers, importers and the public. Public comment was invited until December 5, 1983.

Customs adopted the proposal as a final rule by publication of T.D. 84-126 in the Federal Register of May 31, 1984 (49 FR 22629). However, the final rule included a slight expansion of the geo-

graphical limits of the port of entry of Gramercy, Louisiana. The slight expansion had not been mentioned in the October 5, 1983, proposal.

It was brought to Customs attention that the expansion of the limits of the Gramercy port could have some unexpected adverse impact on several concerns in the Gramercy area. Accordingly, on July 2, 1984, Customs published two Federal Register notices relating to this matter. The first notice (49 FR 27142), delayed indefinitely the effective date of the Gramercy expansion. The second notice (49 FR 27172), formally proposed the expansion that had been included in the May 31, 1984, final rule and invited public comment on the matter. The comment period closed August 31, 1984, and Customs has now concluded its review and analysis of all comments received.

Discussion of Comments

There were 18 comments received concerning the expansion, 9 in favor, 9 opposed. Commenters included U.S. congressmen, members of Louisiana state and local government, and representatives of businesses and trade associations.

Some of the proponents of the Gramercy port expansion cited increased convenience of obtaining Customs service while opponents claimed the creation of a clearance obligation in an area now outside port limits would significantly but needlessly increase both Customs workload and shippers' costs. The main reason the expansion had been requested was to bring the Gramercy port limits into line with the state determined boundaries of the Southwest Louisiana Port Commission. A comment received from a Louisiana state senator urged Customs to withhold any action on Gramercy while the Louisiana Ports Study Commission completed its study of the Louisiana ports and their relationship to each other.

After review of all comments received and further analysis of the matter, Customs has determined that expansion of the Gramercy port limits is not necessary to maintain or expand the current service level at the port. The division among the commenters is more a political dispute among competing port commissions, that of New Orleans and South Louisiana. The concurrence of Customs and state determined port boundaries would affect state port workload statistics and the allocation of state grants. However, the expansion would negatively impact shippers and increase Customs workload without creating any compensating benefits to the community at large.

For the above stated reasons, the proposal to expand the geographical limits of the Customs port of entry of Gramercy, Louisiana, is withdrawn.

DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, Personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: February 21, 1985.
EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

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